

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Lily Kim	Team: Squad #6	CCRB Case #: 202003541	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 05/18/2020 5:35 PM	Location of Incident: 185-20 Hillside Avenue	Precinct: 103	18 Mo. SOL 11/18/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 05/18/2020 5:38 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/26/2020 9:44 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Lance Walter	30215	951417	103 PCT
2. POM Christophe Messina	18635	966713	103 PCT
3. POM Joseph Going	08858	960596	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kevin Gwinn	14299	956711	103 PCT
2. POM Michael Porcelli	06675	966781	103 PCT
3. POM Brian Webber	11110	939678	103 PCT
4. POF Karina Lucero	27425	965292	103 PCT
5. SGT Dominick Perfetto	05230	940572	103 PCT
6. POM Philip Aimutis	9295	968215	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christophe Messina	Discourtesy: Police Officer Christopher Messina spoke discourteously to § 87(2)(b)	
B.POM Lance Walter	Force: Police Officer Lance Walter used physical force against an individual.	
C.POM Joseph Going	Off. Language: Police Officer Joseph Going made offensive remarks to § 87(2)(b) regarding mental health status.	

## Case Summary

On May 18, 2020, § 87(2)(b) filed a complaint on behalf of § 87(2)(b) who was sixteen years old at the time of the incident, with the Internal Affairs Bureau under original log § 87(2)(b). On May 26, 2020 the CCRB received the complaint.

On May 18, 2020, at approximately 5:15 p.m., PO Christopher Messina and PO Lance Walter of the 103<sup>rd</sup> Precinct responded to a criminal-mischief-in-progress at 185-20 Hillside Avenue in Queens. § 87(2)(b) stated that she caused the mess in the store, and a physical struggle ensued as PO Walter and PO Messina attempted to handcuff § 87(2)(b). While on the ground with § 87(2)(b), PO Messina stated, “Fucking stupid,” and “Yeah well that's smart. That's real fucking smart” (**Allegation A—Discourtesy**, § 87(2)(g), § 87(2)(b) was handcuffed and escorted out of the store. PO Walter requested an ambulance and additional units because he determined that § 87(2)(b) was an emotionally disturbed person. PO Joseph Going of the 103<sup>rd</sup> Precinct and additional officers responded, and § 87(2)(b) was placed in PO Going’s vehicle. § 87(2)(b), an independent witness, was driving down Hillside Avenue when she noticed police activity ahead of her. PO Messina and PO Walter walked § 87(2)(b) who was handcuffed, to the left side of the police vehicle and placed her in the back-passenger seat. PO Walter backed up and allegedly kicked § 87(2)(b) (**Allegation B—Force**, § 87(2)(g)). While § 87(2)(b) was in the vehicle, PO Going told § 87(2)(b) “What are you going so crazy for? Relax,” “What are you getting all crazy for?”, and “I was just holding you down. You're going so crazy for nothing” (**Allegation C—Offensive Language**, § 87(2)(g)). This incident did not result in a summons or arrest.

Body-worn camera footage was obtained of the incident.

## Findings and Recommendations

### **Allegation A—Discourtesy: Police Officer Christopher Messina spoke discourteously to § 87(2)(b).**

It is undisputed that PO Messina and PO Walter responded to a criminal mischief-in-progress call at 185-20 Hillside Avenue. When they arrived at the deli, § 87(2)(b) and an unidentified store owner were inside.

At the 1:27 mark in PO Messina’s BWC (**BR 01**), PO Messina turns toward the back of the store. A rack of chips is collapsed on the floor and there is merchandise scattered around. At the 1:41 mark, PO Walter asks who did “this,” referring to the mess in the store. § 87(2)(b) responds that she did, and PO Walter tells her to turn around and put her hands behind her back. § 87(2)(b) stands with her back against the counter and says no. At the 1:47 mark, PO Walter and PO Messina engage in a physical struggle with § 87(2)(b). At the 2:26 mark, PO Messina tells § 87(2)(b) “Give me your other fucking hand... Fucking stupid.” At the 2:41 mark, § 87(2)(b) becomes still as the officers maintain control and prepare to handcuff her. § 87(2)(b) says, “I swear to God, if I have a miscarriage, I'm going to fuck the...” and the rest is inaudible. PO Messina responds, “Yeah, that's real smart. Real fucking smart.”

§ 87(2)(b) did not witness the portion of the incident that occurred inside the store. A statement was not obtained from § 87(2)(b) as her mother did not want her to provide one.

PO Messina testified (**BR 02-03**) that upon his and PO Walter’s arrival, § 87(2)(b) admitted to creating the mess in the store. PO Walter attempted to handcuff § 87(2)(b) when a physical struggle

ensued. PO Messina admitted that he said, “Fucking stupid,” referring to the situation because he was frustrated that she was physically fighting them. PO Messina admitted that he stated, “Give me your fucking hands,” as well as “Yeah, that’s smart. That’s real fucking smart.” PO Messina stated that under the circumstances where § 87(2)(b) was being physically aggressive and refused to give the officers her hands even after multiple orders, he used the word “fucking” to convey that she had to give them her hands. Additionally, immediately before PO Messina stated, “Yeah, that’s smart. That’s real fucking smart,” § 87(2)(b) had said something about being pregnant. PO Messina addressed this with profanity because he believed that she was the aggressor in this scenario.

Event § 87(2)(b) (BR 04) was generated as a 10-39C1 (criminal mischief-in-progress). It was ultimately resolved when § 87(2)(b) was transported to § 87(2)(b) AIDED Card § 87(2)(b) (BR 05) notes that § 87(2)(b) was an emotionally disturbed person removed to § 87(2)(b) where PO Walter contacted her father, § 87(2)(b).

The Department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect, while efficiently rendering police services and enforcing the laws impartially, by fighting crime both through deterrence and the relentless pursuit of criminals, Patrol Guide Procedure 200-02 (BR 06). Profane remarks, made during stressful situations or while an officer is trying to get a chaotic situation under control, are not misconduct. The interaction in this case was not so chaotic that the duty of courteous and professional behavior should be overridden by the immediate need to maintain order. As such, the profanity used was unnecessary and without a legitimate police purpose, DAO-DCT Case #2017-17005 (BR 07).

During the physical struggle to handcuff § 87(2)(b) only the store owner and § 87(2)(b) were inside the store, and it is reasonable to believe that any statements made were directed to § 87(2)(b) or were about her. Although PO Messina is captured on BWC stating, “Give me your other fucking hand,” this was not alleged by a civilian and the statement follows multiple verbal requests to § 87(2)(b) to cooperate with their attempts to restrain her. § 87(2)(g)

§ 87(2)(g) PO Messina remarked “Fucking stupid,” and “That’s real fucking smart,” § 87(2)(g). Although PO Messina explained that the comment “Fucking stupid,” was in reference to the situation as a whole rather than § 87(2)(b) specifically, this statement was made within earshot of § 87(2)(b) § 87(2)(g).

§ 87(2)(g)

#### **Allegation B—Force: Police Officer Lance Walter used physical force against an individual.**

It is undisputed that PO Walter requested an ambulance to the location when he determined that based on her behavior during the handcuffing, § 87(2)(b) was an EDP and required an evaluation. PO Walter and PO Messina placed her in a police vehicle to hold her temporarily until an ambulance arrived.

At the 6:01 mark in PO Walter’s BWC (BR 08), PO Walter and PO Messina walk § 87(2)(b) to another marked police vehicle. PO Walter tells § 87(2)(b) to stop kicking as they walk to the other

vehicle. The passenger side rear door is broken, so PO Walter and PO Messina walk § 87(2)(b) to the driver side door. At the 6:14 mark, PO Gwinn opens the car door. At the 6:24 mark, PO Walter tells § 87(2)(b) to put her seatbelt on. At the 6:28 mark, PO Walter leans in to fasten § 87(2)(b) seatbelt. At the 6:33 mark, there is a lot of motion, making it unclear as to what happened. PO Walter says something about his camera. At the 6:44 mark, PO Walter backs up and his camera comes back into focus. At the 20:16 mark, PO Walter states that he tried to push her foot down and his shoe came off. At the 27:55 mark, PO Walter states that his shoe tongue is messed up because it fell off when he “pushed/kicked” § 87(2)(b) foot to stop her from kicking him.

§ 87(2)(b) testified (BR 09) that PO Messina and PO Walter escorted § 87(2)(b) to a police vehicle and placed her in the back-passenger seat. § 87(2)(b) did not know § 87(2)(b) § 87(2)(b) did not do anything physical with her body besides walking with the officers. § 87(2)(b) did not see what happened when PO Walter and PO Messina put § 87(2)(b) inside the vehicle. After they placed § 87(2)(b) inside the vehicle, PO Walter backed up and kicked § 87(2)(b) who screamed like she was wounded. § 87(2)(b) did not see where on her body PO Walter kicked § 87(2)(b) PO Walter did not say anything before he kicked her. PO Walter looked as though he was preparing to kick § 87(2)(b) again but PO Messina stepped between her and PO Walter. PO Walter reenacted what he had done to § 87(2)(b) for the other officers and told them what he had done.

PO Walter testified (BR 10) that when the cage car arrived, he placed § 87(2)(b) in the backseat, at which point § 87(2)(b) kicked PO Walter in the face and the chest, which knocked his BWC off. PO Walter was standing right next to § 87(2)(b) when she kicked out of the car at PO Walter. § 87(2)(b) was placed in the police vehicle because she was being arrested. PO Walter did not kick § 87(2)(b) PO Walter lifted his leg to block § 87(2)(b) kick, but he did not kick § 87(2)(b) Upon reviewing his BWC from the 27:55 mark, PO Walter confirmed that when he told officers that he “pushed/kicked” § 87(2)(b) foot to stop her from kicking him, he was describing the same blocking motion he described earlier in his interview.

PO Messina testified that PO Walter did not kick § 87(2)(b) PO Messina later learned that PO Walter used his foot to block her kicks, but did not observe it directly at the time because he was trying to buckle her in. PO Going testified (BR 11) that PO Walter did not kick § 87(2)(b) and that PO Walter did not say that he kicked § 87(2)(b)

BWC confirms that PO Lucero arrived after the alleged kick occurred and therefore her statement was not obtained for this allegation.

BWC captures the entirety of the incident, but due to the angle of all officers’ camera, none of the footage captures PO Walter’s legs in the camera frame. § 87(2)(b) an independent third-party witness, testified that she observed PO Walter kick § 87(2)(b) while § 87(2)(b) was in the police vehicle. However, § 87(2)(b) did not observe specifically where § 87(2)(b) was kicked or what happened in the vehicle before the kick. § 87(2)(b) did not provide a statement because her mother did not consent. PO Walter denied kicking § 87(2)(b) and stated that he only used his leg to block her kicks.

§ 87(2)(g)

**Allegation C—Offensive Language: Police Officer Joseph Going made offensive remarks to § 87(2)(b) regarding mental health status.**

At the 0:35 mark in PO Going's BWC (BR 12), PO Walter walks § 87(2)(b) to the driver's side back door of PO Going's vehicle. PO Going says, "What are you going so crazy for? Relax." At the 2:29 mark, PO Going asks § 87(2)(b) "What are you getting all crazy for?" and then tells her to stop kicking. At the 3:14 mark, § 87(2)(b) lifts her right leg and tries to kick the officers over her left leg. PO Lucero holds § 87(2)(b) right leg from the other side of the vehicle. At the 6:33 mark, PO Going backs out of the vehicle and says, "Crazy." At the 6:40 mark, PO Going says, "I was just holding you down. You're going so crazy for nothing."

§ 87(2)(b) did not witness this portion of the incident.

PO Going explained that he asked § 87(2)(b) why she was acting crazy because of the kicking, screaming, biting, etc. that were described earlier. PO Going was looking for an explanation and trying to figure out what she needed, such as medication or assistance.

PO Messina, PO Lucero, and PO Walter did not recall if PO Going used the word "crazy."

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BWC captures PO Going's use of the word "crazy" multiple times while addressing § 87(2)(b). PO Going explained that he used the word "crazy" repeatedly because he did not understand her violent and aggressive behavior. § 87(2)(g)

§ 87(2)(g)  
Additionally, § 87(2)(b) had been kicking and screaming in the vehicle, but she was secure. § 87(2)(g)

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### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 13).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 14).
- PO Messina has been a member-of-service for three years and has been a subject in three cases and four allegations. Cases #202003253, #202007033, and #202105893 are all pending investigation. § 87(2)(g)
- PO Walter has been a member-of-service for ten years and has been a subject in nine cases and sixteen allegations, one of which has been substantiated. Case #201802606 involved a substantiated allegation of gun pointed against PO Walter. The Board recommended Command Discipline A, and the NYPD imposed Command Discipline A. Case #202003253 is pending investigation. § 87(2)(g)

- Mediation, Civil, and Criminal Histories**
- This complaint was not suitable for mediation.
  - As of October 21, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**BR 15**).
  - [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Reviewer: \_\_\_\_\_

Signature \_\_\_\_\_ Print Title & Name \_\_\_\_\_ Date \_\_\_\_\_